

## **FINAL STATEMENT OF REASONS**

This action amends provisions governing the notification to local law enforcement agencies of the pending release of certain offenders from prison, both in the community where an inmate will be released and in the community where their crime was committed. A change in the statutory requirement applicable to the California Department of Corrections and Rehabilitation (CDCR) requires amendments to the California Code of Regulations. The existing requirement has been altered by amendments to Penal Code (PC) Sections 3058.6 and 3058.9. PC Section 3058.6 now requires the Department's notification to be 45 days prior to the release of an inmate whose current commitment is for a violent offense as defined by PC Section 667.5, applicable to either controlling or non-controlling commitment offenses. PC Section 3058.9 applies the same notification requirement for persons convicted of certain offenses against minors and children.

In order to meet this legislative requirement, the Department must ensure that advancing a qualifying inmate's release date through credit restoration does not circumvent the statutory intent and time frame specified for notification. The purpose of such notification is to allow community input into parole placement decisions. Strong public opposition against release of a particular parolee into a community may cause alternative placement of that individual.

The specific statutes prohibit the Department from administratively restoring credit if the restoration would deny the 45-day notice to law enforcement. Furthermore, the case-by-case calculation and processing of credit restoration for affected offenders must be cut off at some point prior to 45 days. Because of this administrative reality, new application deadlines have to be created for subject inmates in order to avoid invading the 45-day mark that applies to them.

It is important to note that, aside from establishing exceptions applying only and specifically to those individuals subject to statute, existing practices are not otherwise being changed. Good conduct following a rule violation can lead to credit restoration—normally calculated just prior to release—for all inmates. A longer application time frame will apply only to a limited number of inmates. This approach is preferable to the alternative of a “blanket” 75-day credit restoration prohibition, which has also been considered, but rejected as arbitrary and a potential violation of the liberty interest of inmates.

Furthermore, these proposed regulations support both underlying planning and coordination efforts that must occur before an inmate's release, as well as, the ability to meet the 45-day mandate for notice to local law enforcement authorities. The earning and restoration of work incentive credits of a limited number of inmates may be curtailed on a case-by-case basis; however, even under the one-time application procedure of existing regulations, if inmates do not apply far enough in advance of their release, they will not be restored the maximum restorable credits.

## **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

#### **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

**Subsections 3043.1(a) through 3043.1(d) are unchanged.**

**Subsection 3043.1(e) is amended** to prevent designated offenders from waiving the right to earn behavior and participation credits in order to qualify for work incentive credits, which have a higher earning rate, if granting the waiver would prevent notification of release in the time frame required by law. This waiver applies only to inmates committed to a determinate sentence prior to January 1, 1983; most of these affected inmates have already signed such waivers or have chosen not to do so. The change is necessary to ensure that any such inmates' credit earning status will not change just prior to their scheduled release date, as PC Sections 3058.6 and 3058.9 necessitate. Stabilizing a release date in this manner allows sufficient time to accomplish all pre-release activities and procedures, and to accommodate the mandated 45-day notice.

**New Section 3043.7 is adopted** to clarify that, as required by Penal Code Sections 3058.6 and 3058.9, inmates shall not be placed in a greater credit earning category if it prevents notification to local law enforcement of the release of inmates described in Section 3327(c)(2) in the 45-day time frame. Work group A1 (1 day credit for 1 day work) is a greater earning status than work group A2, D1, C, etc., therefore a violent offender in one of the lesser earning status could not be placed in A1 if the change in the release date will result in the notice being sent late to law enforcement.

**Subsection 3327(a)(1) is unchanged.**

**Subsection 3327(a)(2) is amended** for clarity, to ensure understanding of the intent regarding what constitutes a disciplinary-free period. It could be contended that current language allows restoration of credits if an inmate commits another rule violation during the disciplinary-free period, but is not found guilty of that offense (i.e., the hearing was not concluded) until after the relevant period. This change is necessary because the issue is when the offense was committed, not when the adjudication was completed.

**Subsection 3327(a)(3) through 3327(b)(2) are unchanged.**

**Subsection 3327(c) is amended** for clarity. The word “under” is added and the phrase “are present” deleted in order to more accurately capture the substantive meaning of the text in question.

**Subsection 3327(c)(1) is unchanged.**

**Existing subsection 3327(c)(2) is renumbered to new subsection 3327(c)(3).**

**New Subsection 3327(c)(2) is adopted** to prohibit certain violent offenders, and those convicted of child abuse or sexual offenses against children, from any credit restoration that would result in notification being provided local law enforcement in less than the time required by statute. This is necessary to implement the specific Penal Code requirement that 45-day community notice is to be provided and that credits shall not be restored to allow release within that time. This change also ensures that the Department can operationally establish adequate time frames and a procedural process for coordinating the release.

**Section 3327(c)(3) is renumbered from existing subsection 3327(c)(2) and is amended** to allow case records staff, at the conclusion of a credit restoration hearing, to determine a release date allowing the required time for release processing of certain offenders as specified. This is necessary to ensure Penal Code compliance and allow sufficient release processing time.

**Subsection 3328(a) is unchanged.**

**Initial sentence of subsection 3328(b) is amended** to clarify the intent regarding how long an inmate must be disciplinary free for the exception in question to apply. The current language is confusing because it implies that more than a one-time period is involved.

**Secondary sentence of subsection 3328(b) is renumbered to new subsection 3328(b)(1) and amended** to clarify language regarding “when” not “if” a one-time application for restoration credit may be made regarding the inmate’s established release date regarding a minimum of two months disciplinary free behavior.

**New Subsection 3328(b)(2) is adopted** to state that the specified offenders are eligible for the one-time credit restoration described in existing language now designated as subsection 3328(b)(1), if applications are made within 120 days of release. This change establishes a limitation on inmate applications for certain credit restorations when remaining disciplinary free. Division “D” and “E” day-for-day offenders can be restored 45 and 30 days, respectively, because 75 and 90 days provide a cushion for processing and notification.

**Initial sentence of subsection 3328(c) is amended** to clarify the intent regarding how long an inmate must be disciplinary free for the exception in question to apply. The current language is confusing because it implies that more than a one-time period is involved.

**Secondary sentence of subsection 3328(c) is renumbered to new subsection 3328(c)(1) and amended** to clarify language regarding “when” not “if” a one-time application for restoration credit may be made regarding the inmate’s established release date regarding a minimum of two months disciplinary free behavior.

**New Subsection 3328(c)(2) is adopted** to specify that subject violent/sexual offenders are eligible for the one time credit restoration described in existing language now designated as subsection 3328(c)(1), if applications are made within 75 days of release. Division "F" day-for-day offenders can be restored 15 days credit because a cushion of 75 days for processing and law enforcement notification has been created.

**PUBLIC HEARING COMMENTS:**

**Public Hearing was held on March 6, 2006 at 11:30 a.m.**

No one commented at the Public Hearing.

**SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS:**

**COMMENTER #1:**

**Comment A:** Commenter contends that the Department should implement an automated program, via the computer that simultaneously, at the period of 90 days before an inmate's Minimum Eligible Parole Date (MEPD)/Release Date, notifies the parties according to law and the prison where the inmate resides.

**Accommodation:** None

**Response A:** Department contends that an automated program would not be practicable due to the case-by-case assessment of inmates. Furthermore, PC Section 3058.6 requires the Department's notification to be at least 45 days prior to the release of an inmate whose current commitment is for a violent offense as defined by PC Section 667.5, applicable to either controlling or non-controlling commitment offenses.

**Comment B:** Commenter contends that because the Department knows the estimated release dates of most inmates, the notice should be sent earlier. He contends that as long as the public has plenty of advance notice, the criminal convictions are public records, the affected law enforcement/public should already know the release date in most offenses. Also, if the release dates change, the public / law enforcement already have notice if they exercise their right to obtain public records.

**Accommodation:** None.

**Response B:** Department contends that the estimated release dates of most inmates are sent out as timely as practicable by staff. Workload issues may preclude staff from an earlier notification except as required by statute. The Department contends that PC Section 3058.6 requires the Department's notification to be at least 45 days prior to the release of an inmate whose current commitment is for a violent offense as defined by PC Section 667.5, applicable to either controlling or non-controlling commitment offenses. PC Section 3058.9 applies the same notification requirement for persons convicted of certain offenses against minors and children. Additionally, the purpose of the notification is to allow community input into parole placement decisions. Strong public opposition against release of a particular parolee into a community may cause alternative placement of that individual.

**Comment C:** Commenter contends that Parole Agents get notices 120 – 150 days in advance of new inmates coming to their caseload.

**Accommodation:** None.

**Response C:** Department contends that Parole Agents are noticed 120-150 days in advance of new inmates being placed to their caseload in order to adjust their caseloads and better serve their current and new parolees in the standards approved by the Department. The statute does not address the length of time internal notices are handled within the Department.

**Comment D:** Commenter contends lifers that gain parole shouldn't have to be imprisoned longer when their term is set by the Board of Parole Hearings. Commenter states that this notice should go out once notice goes to the BPH and the Governor's Office.

**Accommodation:** None.

**Response D:** Department contends that the granting of a release date to a Lifer inmate by the BPH is not affected by these proposed regulations. PC 5058.6 (b)(3) states that when notification cannot be provided within the 45 days due to the unanticipated release date change of an inmate as a result of an order from the court, an action by BPH, the granting of an administrative appeal, or a finding of not guilty or dismissal of a disciplinary action, that affects the sentence of the inmate, or due to a modification of the department's decision regarding the community into which the person is scheduled to be released, the Department shall provide notification as soon as practicable, but in no case less than 24 hours after the final decision is made regarding where the parolee will be released.